

Testimony of Professor Jennifer Wriggins, Esq., in Support of L.D. 690, An Act to Ensure the Victims of Assault, Battery and False Imprisonment, Including Victims of Domestic Violence, Have parity under Tort Law

Good afternoon, Senator Anne Carney and Representative Thom Harnett, and members of the Judiciary Committee. My name is Jennifer Wriggins and I live in Portland ME. I am a Professor at University of Maine School of Law and am also a lawyer. I have taught at Maine Law for 24 years. I teach Torts, a foundational required course that deals with compensation for harm caused by wrongs. I am speaking not as a representative of the University of Maine School of Law or the University of Maine, but as an individual with specialized knowledge in this area.

Right now in Maine, if a person is injured by someone else's carelessness – or to put it more formally, negligence - in a car crash, they have six years to seek compensation from the person that caused their harm because our general statute of limitations provides that this time limit applies.¹ Yet, if a person is injured by an assault, battery or false imprisonment, they only have two years to seek compensation from the person who harmed them² I think that makes no sense for 3 reasons I'll explain in a minute. If this bill passes, it means that people injured by assault, battery and false imprisonment, like victims of car accident negligence, will have six years to seek compensation.³

Here are 3 reasons why I urge you to support this bill.

1. The only reason for the shorter time limit for intentional torts like assault and battery is an Act of Parliament passed in 1623.

In writing an article about domestic violence and torts some years ago, I tried to figure out the reason for the difference between the statute of limitations for things like assault and battery on the one hand, and things like negligence on the other hand. I found that the origin of the idea that there should be shorter statutes of limitations for things like assault and battery is an Act of Parliament that was passed in 1623.⁴ No one knows why Parliament decided in 1623 that statutes of limitation for intentional torts like assault and battery should be shorter than those for the torts that eventually evolved into negligence.⁵ But we do know that most states' statute of limitations derive from this 1623 Act of Parliament.⁶ State statutes generally lump assault, battery, and false imprisonment together in a short time period, and also typically have a longer period for other actions, such as negligence.⁷ But the fact that this distinction has been in the law for a long time is no reason for it to continue. Chief Justice Oliver Wendell Homes stated in 1897: “[i]t is revolting to have no better justification for a rule of law

¹ 14 MRSA sec. 752 (All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards.)

² 14 MRSA sec. 753 (Actions for assault and battery, and for false imprisonment, slander and libel shall be commenced within 2 years after the cause of action accrues.)

³ 14 MRSA sec. 752.

⁴ An Act for Limitation of Actions, and for Avoiding of Suits in Law, 21 Jam. 1 c. 16 (1623)(Eng.), reprinted in William D. Ferguson, *The Statutes of Limitations Saving Statutes*, app. D, at 515. Wriggins, *Domestic Violence Torts*, 75 So. Cal. L. Rev. at 169-175

⁵ An Act for Limitation of Actions, and for Avoiding of Suits in Law, 21 Jam. 1 c. 16 (1623)(Eng.), reprinted in William D. Ferguson, *The Statutes of Limitations Saving Statutes*, app. D, Para. III at 516-517.

⁶ Ferguson at 46.

⁷ See Wriggins, *Domestic Violence Torts*, 75 So. Cal. L. Rev. at 139, fns 86-87 (2001)

than that so it was laid down in the time of Henry IV.”⁸ I looked it up and this Act of Parliament here was laid down in the time of King Charles I, more than 100 years *before* the time of King Henry IV.

2. The existing shorter time limit to file a lawsuit is unfair to victims of intentional torts like assault and battery.

Assault, battery and false imprisonment are intentional torts which are harmful—everyone agrees they are *more* serious than negligence which is based on carelessness rather than *intent* to harm.⁹ Plus, when we consider domestic violence in particular, there are many reasons why survivors may be particularly burdened by being forced to bring a claim within two years. Bringing a lawsuit during an ongoing relationship or in its immediate aftermath is a practical impossibility. Safety issues and economic issues also pose burdens to swift assertion of claims. Psychological barriers also may intervene; it can take time to heal and take practical steps.¹⁰ The bill proposes a reasonable limit, consistent with other torts, that has worked well for decades.

3. Passage will not lead to a ‘flood of litigation,’ but perhaps to more justice.

First, when victims/survivors receive compensation in civil lawsuits in the US it is almost always from liability insurance policies that go along with homes, apartments and cars.¹¹ These policies all have a carve-out, known as the “intentional act exclusion” so that they may not cover many intentional acts like battery.¹² Without insurance, it is unlikely that there will be litigation, except where the defendant has assets. The second reason I do not think it likely the bill would lead to a litigation flood is that most people simply do not have available assets.¹³ But, there will be situations where a person has intentionally caused harm with assault and battery, and justice requires that they be brought to account and to pay for their actions. This bill would bring more justice in those types of situations. Plus, there is a value in having the law treat intentional torts consistently with negligence, reflecting that injured persons in either category should have an equal time to bring their claim.

I am happy to answer any questions.

⁸ Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 469 (1897).

⁹ For example, the American Law Institute, a national organization consisting of judges, lawyers and law professors that researches and publishes Restatements and other documents concerning law, wrote “[s]omewhat ironically—given that intentional torts are deemed considerably more serious than torts of mere negligence – in certain circumstances the plaintiff is worse off if the tort committed against the plaintiff is classified as intentional rather than negligent. In some jurisdictions, for example the statute of limitations is shorter for intentional torts than for negligent torts...” Restatement (Third) of Tort, Introductory Draft, sec. 1 cmt a. (1999).

¹⁰For a general discussion of these factors, see Jennifer Wriggins, 75 So. Cal. L. Rev. 121 at 141-144 (2001).

¹¹ See Kenneth S. Abraham, *The Liability Century* (2008), Tom Baker, *Reconsidering Insurance for Punitive Damages*, 1998 Wis. L. Rev. 101, 120.

¹² Wriggins, *Domestic Violence Torts*, 75 So. Cal. L. Rev. at 135-137.

¹³ Wriggins, *Domestic Violence Torts*, 75 So. Cal. L. Rev. 137-139.